IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/03/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.4307 OF 2003
AND
WPMP.NOs.5397,5398 & 5399 OF 2003

Ansaldo Engergia S.p.A.
a Company registered under
the laws of Italy, having its
registered office at
Via Nicola Lorenzi 8-16152
Genova, Italy, represented
by its Authorised Signatory .. Petitioner

-Vs-

1. Income Tax Officer,
(International Taxation)-II
VIIth Floor, Old Annexe Building
121, Nungambakkam High Road,
Chennai 600 034.

2. Neyveli Lignite Corporation Ltd.
represented by its Chairman
Neyveli House
135 E.V.R. Salai,
Chennai 600 010.

3. Union of India
represented by Secretary
to Government,
Ministry of Finance,
New Delhi. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.Mohan Parasaran
Senior Counsel for
Mr. Sathish Parasaran

For Respondent -1 : Mrs. Pushya Sitaraman
(Income Tax)

:J U D G M E N T

Petitioner is a foreign company registered in Italy. The petitioner had entered into contracts with Neyveli Lignite Corporation, the second respondent. It is claimed that the contracts were on Turnkey basis for implementation of a comprehensive Power Project for the second respondent. It is the contention of the petitioner that the petitioner is entitled to the benefits under Section 44BBB of the Income Tax Act (hereinafter referred to as the Act) and on that basis application for an order under Section 197 of the Act was made and on the basis of such application, the Deputy Commissioner of Income Tax by order dated 9.3.1999 and 29.4.1999 authorised the second respondent to deduct tax at 5%. The certificates issued were valid till 31.3.1999 and 31.3.2000 respectively. The similar certificates for the subsequent financial years 2000-2001, 2001-2002 and 2002-2003 were granted as requested by the petitioner. In the last such certificate dated 1.5.2002 it was indicated that such certificate was to be valid till 31 .3.2003, unless it is cancelled. While the matter stood thus, the petitioner received an impugned communication dated 22.11.2002 whereunder the Certificate dated 1.5.2002 has been cancelled.

2. The impugned communication dated 22.11.2002 is extracted hereunder :-

 . . . The certificate u/s.197(1) of the Income Tax Act, date 1st May 2002 issued by this office in the case of M/s. Ansaldo Energia SpA, c/o Arthur Anderson, 8th Floor, West Minister, 108, Dr. Radhakrishnan Salai, Mylapore, Chennai 600 004 authorizing you to deduct tax at the rate of 4.2% on payment of the other sums due under the Agreement No.007/005T/HTSI EXPN(1)A-01/97, dated December 10, 1998 to M/s. Ansaldo Energia SpA is hereby cancelled.

You are hereby directed to deduct tax at the rates applicable as per the Income Tax Act. . . .

3. The petitioner has contended that such cancellation is illegal and contrary to the provisions contained in Section 197(1) and (2) read with Section 44BBB of the Act and is vitiated by non-application of mind and violative of the principles of natural justice.

4. The contention of the learned counsel appearing for the petitioner to the effect that the petitioner is entitled to the benefits under Section 44BBB of the Income Tax Act, is a matter relating to the question of assessment. Any discussion on the questions raised by the petitioner or the respondents at this stage is uncalled for as the matter is required to be considered by the appropriate authority and any opinion expressed at this stage would likely prejudice either of the parties. Legality of the impugned order dated 22.11.2002 has to be considered not in reference to the merits of the assessment order, has such question is to be determined by the appropriate authority.

5. The main contention of the learned counsel for the petitioner is that before issuing the impugned notification, the principles of

natural justice have not been followed. For the aforesaid purpose, the learned counsel appearing for the petitioner has relied upon a decision of Madhya Pradesh High Court reported in (1994) 122 CTR Reports (M.P) 19 (SANGHI BROTHERS (INDORE) LIMITED vs. INSPECTING ASSISTANT COMMISSIONER OF INCOME TAX). In the said case, the petitioner was granted Certificate under Section 197(3) of the Act certifying that The dividend be issued declaring that 100% of such dividends are exempt and on the strength of such certificate, the petitioner had issued dividend warrants to the shareholders without making any deduction of tax and such certificate was subsequently cancelled after about three years without giving any opportunity of hearing to the petitioner. Learned single Judge of the High Court quashed such order of cancellation on the ground that such order had been issued without giving any show cause notice and opportunity of hearing.

6. On a bare reading of the aforesaid judgment, it is apparent that the petitioner in that case was very much prejudiced as on the basis of the certificate action had been taken by the petitioner having financial ramifications. Even assuming that such decision is applicable, in the present case it is apparent that certain information have been called for from the petitioner. It cannot be said that the present action by the respondents is contrary to the principles of natural justice. Moreover, even if the certificate for deduction at source at a lower rate is withdrawn, the consequence of such withdrawal would be that deduction has to be made at a higher rate, but ultimately the question of liability is to be decided in assessment proceedings. The liability of the petitioner is not being finally determined at the time of the withdrawal of the certificate. If ultimately it is found that the petitioner is liable to pay tax at a rate lower than the deduction to be made, it is obvious that the amount paid is to be refunded.

7. For the aforesaid reasons, I do not find any merit in this writ petition which is accordingly dismissed. It is however made clear that no opinion is expressed on merits of the contentions with regard to applicability of 44BBB of the Act and such matter is to be decided by the appropriate authority in accordance with law notwithstanding the stand which has been indicated in the counter affidavit. No costs. Consequently, the connected Miscellaneous petitions are closed.

Index : Yes
Internet : Yes
dpk

To

1. Income Tax Officer,
(International Taxation)-II
VIIth Floor, Old Annexe Building
121, Nungambakkam High Road,
Chennai 600 034.

2. Neyveli Lignite Corporation Ltd.
represented by its Chairman

Neyveli House
135 E.V.R. Salai,
Chennai 600 010.

3. Union of India
represented by Secretary
to Government,
Ministry of Finance,
New Delhi.